

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION No. 04-CV-11986MEL

W. Michael Cahill, Pro-Se
Plaintiff,
v.
Verizon (New England), et al.
Local 2222 IBEW
Defendant

**PLAINTIFFS' MEMORANDUM OF FACTS IN OPOSITION TO
TO MOTION TO DISMISS/ LEAVE**

The Defendants never recognized the change in the Plaintiffs status from Full time Regular to Temporary, until the recall in July of 2003. The first act of discrimination did not occur until the Plaintiff was not called back to work with all of the other 3500 employees. Both defendants denied that there was a status change and this is documented as early as October of 2002¹ and the change was not admitted until August 26, 2004 (as a clerical error.) Payroll reports provided by the defendant prove in fact the Plaintiff was full time regular and that there was no authorized change to change him to a Temporary employee. The only temporary change that should have been done to the Plaintiff was a "Temporary" transfer to Boston as noted on the 1477 on December 28, 2001. Per Payroll documents he was transferred as a "Full time Regular Employee."

Plaintiffs Claim is Time Barred

The Plaintiff had no reason to pursue this wrongful termination in December 2002 because the Federal Arbitrators were pursuing the wrongful layoff for 3500 employees

¹ Email from Satwane N. Scott to Lisa M. Cahill, dated October 18, 2002. States the Plaintiffs status was never changed, "No changes in status". See payroll documents stating full time regular.

that included the Plaintiff. The Plaintiff was laid off with all Regular Full Time Employees. It was not until the Federal Arbitrators Ruling in July 2003 that the Plaintiff was impacted by a "Clerical Error". During the Plaintiffs employment with Verizon he was treated as a full time regular employee. Management made him full time regular and as a result his temporary status was changed to full time regular in all payroll documents and he was given full time regular benefits such as vacation time, and 401K match. After the recall and all associates were recalled back to work with a report date of July 31, 2003, and the Plaintiff was not recalled the Plaintiff tried to numerous times contact Edward Fitzpatrick and Myles Calvey. When there was no response the Plaintiff contacted the Defendant Verizon on October 27, 2003, November 12, 2003, November 25, 2003, December 8, 2003, and December 16, 2003 within the 6 month statute of limits of when the Defendants Verizon were forced to recall all wrongfully laid off Verizon Employees. The Plaintiff also contacted the Defendant the Union and in Myles Clavey email dated February 24, 2004 he admits that the last time that there was a group of Temps made permanent was during negotiations in 2000, and per payroll documents provided by the defendant this is when the Plaintiff was made full time regular. All other associates that were made full time regular in 2000 were recalled per the arbitrators ruling in July 2003. This is the first instance where the Plaintiff has been retaliated against for his FMLA history and his Disability, and this is the first time that the Plaintiff was impacted by this clerical error. Per the CBA all full time regular employees were laid off on December 27, 2002 and this included the Plaintiff. There was an error and error that changed the status of the Plaintiff as a full time regular employee to a temporary one. A life changing error for the Plaintiff. In payroll reports provided by the defendant Verizon there is no report authorizing this change and in the Plaintiffs file there is no documentation notifying the Plaintiff that his status was changed from Full Time Regular to Temporary. In April of 2002 when the Plaintiff returned from his approved care of

new born care leave (see documented approval on 1477 2002) the birth of his son management (Thomasine Williams, Ellen) told the Plaintiff that his incorrect status as a temporary employee would be corrected, and when he was laid off per the CBA on December 27, 2002 it appeared that it had been corrected. The CBA definition of a "Regular Employee G33.04 A regular employee is one who is engaged for the usual activities of the business and whose employment is reasonably expected to continue for longer than one year, ..." Management (G11.01) utilized there rights and made the Plaintiff Full Time Regular in 2000 and the Plaintiffs employment lasted over 2 years, and would be current if the Defendant did not make a "Clerical Error."

The clock should begin on the admittance of Verizon in August of 2004. Because the defendants were working together the Plaintiff could not prove his status change without this admittance.

The Defendant was on Approved FMLA Leave

FMLA Coverage

The Definition for an eligible employee to take a leave under FMLA. An eligible employee is an employee or a covered employer. The Plaintiff was employed by the Defendat Verizon for more then 12 months and had worked more then 1250 hours, under the Fair Labor Standars Act (See 1477). The Defendant Verizon worksite employees more then 50 employees within 75 miles of there worksite. The Defendant confirmd elegibility and the Plaintiff was approved (See Feb 25, 2002) . The Payroll Documents submitted by Verizon are incorrect, they show the Plaintiff on a vacation time while he was out on approved FMLA (see letter of approval), there is several other mistakes on the 1477 as the Plaintiff was only to be scheduled Monday through Friday, and there appears to be several "whiteout" marks as well. The 1477 provided from

Verizon proves that the Plaintiff was out on approved CNC leave. The Plaintiff was in fact covered by FMLA, and there is no written documentation that Verizon denied the leave, but there is written documentation that the leave was approved. An Employee may take up to 12 workweeks of leave during any 12-month period for one or more of the following reasons:

The birth of a child, and to care for the newborn child;) To care for the employee's spouse, son, daughter, or parent with a serious health condition; and
Because a serious health condition makes the employee unable to perform one or more of the essential functions of his or her job.

Being an "eligible" employee under the FMLA leave the Defendant must maintain the employee's existing level of coverage under a group health plan. At the end of FMLA leave, an employer must take an employee back into the same or an equivalent job. Under both ADA and FMLA, the employee is entitled to return to the same job unless the employer demonstrates that holding the job open would impose an undue hardship.

If the Plaintiff was considered temporary then the Defendants violated the contract section (Article G30) Filling Vacancies. In supporting documents from the Defendant Verizon confirming that in fact on the date of hire of 4/30/01 (i.e. Shon Williams, and several others) when several off the street CO Techs were hired that in fact the Plaintiff was full time regular. If he were not then he would have been able to pursue one of the full time regular positions per the contract (G30.06)

The Defendant further recognized that the Plaintiff was Full Time Regular when they granted him Vacation time in 2000. See Eligibility guidelines for a Temporary Employee. A Temporary Employee needs to work 130 days during the current vacation year in

order to receive vacation time. The Plaintiff was given 1 week's vacation in 2000; see 1477 provided by the defendant Verizon.

The Defendants further recognized that the Plaintiff was fulltime regular through the Work Force Adjustment Plan (G25). If the Defendants followed the CBA then the Plaintiff would have been work completed on or before November 27, 2002. "If the implementation of the above steps does not eliminate the surplus resulting from an external event and if at least 30 days has elapsed from the notification of a surplus pursuant to this Article, the company shall lay off employees as provided for in the layoff provisions in this Labor Agreement." See the Unions response to original complaint, that if the Plaintiff was Temporary he would have been laid off before all full time regular associates.

The Defendants recognized the Plaintiff as a full time regular employee, and chose not to recall him in July of 2003, because of his disability, and FMLA work history.

Supporting documents that the Defendant Verizon has provided prove that the Plaintiff was in fact full time regular and was laid off with all full time regular employees, and all other Full Time Regular associates that were made Full Time Regular in 2000 are back to work. The Defendants Personnel documents do not contain FMLA leave in February 2002; there are several missing Payroll reports, and inconsistencies in the Plaintiffs file.

Conclusion

Both Defendants recognized the Plaintiffs full time regular status when the laid him off on December 27, 2002 along with all full time regular employees, and because the Defendants were aware of the Plaintiffs FMLA, Disability and Opiate addiction they chose not to call him back a violation of the federal arbitrators ruling.

**Verizon
Absence Reporting Center**

03/20/2002

MICHAEL CAHILL
12 White Wood Cir
Amesbury MA 01913

Re.: Absence of **02/25/2002**

033521050

Dear Michael Cahill

The absence for the period indicated above has been approved for FMLA leave. This absence will not be subject to the provisions of the Absence Control Plan, unless it exceeds the duration of your remaining FMLA entitlement.

While this absence has been approved for FMLA leave, you may or may not be entitled to payment under the Company's benefit policies and programs.

cc: FMLA_K0Q501000

Employee Absence/Tardiness Record (BA North)

G-550/1477



Year 2000

Name CAHILL, MICHAEL W.		Social Security No. 033521050		Title C.O. TECH		Work Location 125 HIGH ST. RM314 BOSTON		Net Credited Service Date 10/30/00	
Residence - Street No./Name 14 SOUTH ST.		City SALEM		State MA		Zip Code 01970		Telephone No. 978-740-9887	

No.	Day	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Absence	Tardy
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Previous Year - Days Carried Over		Current Year Vacation	
Vacation/Excused Work Days	Taken:	Taken	

Paid Excused Whole Days		Taken	
Paid Excused Half Days		Taken	
Unpaid Excused Days		Taken	

Floating Holidays		Taken	
Holidays Occ. During Vacation		Taken On:	

Total Year Incidental/Disability & Other Absence		Total Disability & Other Days	

Total This Yr.		Total This Yr.	
VR 2000	000	VR 2000	000
VR		VR	
VR		VR	
VR		VR	
VR		VR	
No. Of Years Perfect Attendance			

C-6501477
REVERSE SIDE

CONTINUE ON G-550-A/1477A

Incidental Absence

~~FOIA~~ = FMLA

IB = Illness Benefits	IBE = "IBA" Beyond 6 Months	ACN = "ACP" Over 52 Weeks	AB = Other Absence Not Paid
IBA = Illness Benefits Off Duty accident	AC = Accident Benefits	ACR = Accident Benefit-Release	FB = Other Authorized Absence Not Paid
IBP = "IB" Beyond 6 Months	ACP = "AC" Beyond 6 Months Thru 52 Weeks	APB = Other Absence Not Paid	

Employee Absence/Tardiness Record (Verizon North)

G-4501417



Year 2001

Name: CHILL, MICHAEL Social Security No.: 033 58 1052 Title: COIT Work Location: 722M ST Net Credited Service Date: 11-30-02

Residence - Street No./Name: 14 SOUTH ST City: SALERNA State: MD Zip Code: 21092 Telephone No.: 915.940.9849

Mo.	Day	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Absence	Tardy		
J	H															H																	0	0	0	
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Previous Year - Days Carried Over

Vacation/Excused Work Days

Taken: 3/10/00 3/24/00 4/1/00 4/6/00 4/27/00

Holiday Occ. During Vacation

Taken: 10

Current Year Vacation

Taken

5/29/01 6/30/01 7/31/01 8/1/01 8/4/01

Paid Excused Whole Days

Taken: 4

Paid Excused Half Days

9/21/01 9/22/01 9/23/01

Unpaid Excused Days

Floating Holidays

Taken: 1

Holidays Occ. During Vacation

Taken: 4/1/01

This Year Incidental/Disability & Other Absence

Total Incidental Absence Days

Total Disability & Other Days

No. Of Years Perfect Attendance

Total This Yr.	
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11/26-11/28 NP - Death in family - Sanjay's - 10

Employee has been ass. to Boston CRP - last 4 months of yr

12-28 Received attendance
Dance in Bradley

1/9/02 Received & noted 1477 Frank & Susan

Employee Absence/Tardiness Record (Verizon North)

Year 7 1575/

[illegible]

1/26-11/28 NP - Death in family - San Francisco - CA

Employee has been ass. to Boston CTR - last 4 months of yr.

12-28 Received attendance
Dinner in Berkeley

1/9/02 Received & noted 1477 Frank & Susan

Complaints in February on hold

EMPLOYEE ABSENCE/TARDINESS RECORD (Verizon orth)

G-550/1
REVERSE S

Date Abs/Tardy	Day of Occur	Reason for Absence or Tardiness	Investigation, Interview Details and Action Taken	Contact	Name, Title and Date
1-8 Thru 1-11 Tue		Sick Flu			
3-25 Thru 4-02	MON	3-25-02	Returning to 125 HIGH ST BOSTON ON 3-4-02-1 Mike's wife had a new baby & he filed for care and given the need to stay home & help care for the new child and well he put all town hopes Mike called in for the day off due to a family emergency, he left a VMS for me @ 7:30am. Mike called in & left VMS to advise call the Absence Reporting Center & FMLA for immediate absence. Mike called in & said to go Children's Hospital w/new baby for tests		3-1 Raymond Dwyer Jr. D.C.
4-29-02	MON	Family Emergency			G. Thomas
4-30-02	TUES				G. Thomas
5-6-02	MON	Medical leave of absence			G. Thomas

CONTINUE ON G-550-A/1477A

II Tardy	V Vacation	X Personal Time or EWD/MPD	H Holiday (Designated)	F Holiday (Floating)	R Restricted Duty
Incidental Absence					
Paid		Not Paid			
DS = Dept. Sickness (1-7 Days)	APS = Half Day Due To Illness	AA = Half Day Due To Illness, Off Duty Accident & Other			
DSA = Dept. Sickness Off Duty Accident	APD = Half Day Due To Off Duty Accident	I = Illness, Off Duty Accident (1-7 Days)			
APA = Half Day Due To On The Job Accident		FA = Authorized Leave Of Absence For Care Of Family (1-7 Days)			
= F = FMLA					

Disability & Other Absence		
IB = Illness Benefits	IBE = "IBA" Beyond 6 Months	ACN = "ACP" Over 52 Weeks
IBA = Illness Benefits Off Duty accident	AC = Accident Benefits	ACR = Accident Benefits-Relapse
IBP = "IB" Beyond 6 Months	ACP = "AC" Beyond 6 Months Thru 52 Weeks	APB = Other Absence Not Paid
		AB = Other Absence Not Paid
		FB = Other Authorized Absence Not Paid

Attendance and Tardiness Record - Interview Details

Mike Cahill

S.S.#

Year



Date	Abs / Tardy	Day of Occurrence	Reason for Absence or Tardiness	Investigation, Interview Details and Action Taken	Contact	Name, Title and Date
5/29				Had group meeting which Mike was present at and explained tasks are to be logged onto the phone by 8:00 am and log off no later than 5 pm. All present understood.		
6/6		Thurs	Medical emergency	Mike's wife had a medical emergency; she recently had a child which she had to have the stitches removed a they were a begin bleeding Mike had to go home to assist in the hospital + take care of newborn + yesterday am. Shouted at Mike + yelled at him. Called into the absence reporting date		
6/7		Fri		Mike called into the absence reporting date today + left this afternoon spoke to Mike about being late yesterday		
10/9/02				He previous day. Had meeting w/ Mike, Stewart, Tim Jackson, + myself. Returned Mike to work and explained FMLA procedure.		
10/28						

Belinda Bonds

Belinda Bonds

Belinda Bonds

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Belinda Bonds

G550A / 1477A (9/94) Reverse

Date	Abs / Tardy	Day of Occurrence	Reason for Absence or Tardiness	Investigation, Interview Details and Action Taken	Contact	Name, Title and Date
11/12				Meeting was held with Michael myself, and Stuart John Jackson.		Pvt. M. Randall Team Leader
				Placed Michael on verbal warning for attendance. Expected		
				absence policy and he understood		
11/13				Slept to Mike about his 45 minute break.		Pvt. M. Randall Team Leader
12/4				Mike's disability has been certified thru 12/15		
				Mike is out of FMLA time (12/15)		